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Attorneys for Plaintiff Robert A. Nitsch, Jr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**In re: High-Tech Employee Antitrust
Litigation**

This document relates to:

ALL ACTIONS

Robert A. Nitsch, Jr.,

Plaintiff, and on behalf of all
others similarly situated,

vs.

**DreamWorks Animation SKG, Inc.; Pixar;
Lucasfilm Ltd., LLC; The Walt Disney
Company; Digital Domain 3.0, Inc.;
ImageMovers; ImageMovers Digital; Sony
Pictures Animation and Sony Pictures
Imageworks;**

Defendants.

Master Docket No. 11-cv-2509-LHK

**NOTICE OF MOTION AND
ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED**

Case No. 14-cv-4062-VC

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Civil Local Rules 3-12(b) and 7-11, Plaintiff Robert A. Nitsch, Jr. ("Plaintiff") submits this administrative motion requesting that the Court consider whether *Nitsch v. DreamWorks Animation SKG, Inc.*, No. 14-cv-4062, and *In re High-Tech*

1 *Employee Litigation*, No. 11-cv-2509, are related and direct the Clerk of Court to reassign *Nitsch* to
2 the Honorable Judge Lucy H. Koh.

3 Reassignment is appropriate because these two cases are closely related, in that (a) a
4 substantial portion of both cases concerns the same parties and events; and (b) separate assignment
5 would both result in an unduly burdensome duplication of labor and expense for the District Court.
6 *See* Civ. L.R. 3-12(a).

7 *First*, these two cases concern overlapping conspiracies that each evolved out of the unlawful
8 agreement between Pixar and Lucasfilm “(1) not to cold call each other's employees; (2) to notify
9 each other when making an offer to an employee of the other company even if that employee applied
10 for a job on his or her own initiative; and (3) that any offer would be ‘final’ and would not be
11 improved in response to a counter-offer by the employee’s current employer (whether Lucasfilm or
12 Pixar).” *In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1188 (N.D. Cal. 2013); *see*
13 *also* Compl. ¶ 2, *Nitsch*, No. 14-cv-4062 (N.D. Cal. Sept. 8, 2014), ECF No. 1 (“*Nitsch* Compl.”).
14 Pixar and Lucasfilm are Defendants in both cases. Much of the same evidence will be central to
15 both cases and is already part of the record in *High-Tech*, including deposition testimony by Pixar
16 and Lucasfilm personnel, documentary evidence detailing their agreement, and evidence of their
17 internal compensation practices. *Compare In re High-Tech*, 985 F. Supp. 2d at 1188, 1198-1201,
18 1203-04, 1219; *Nitsch* Compl. ¶¶ 2, 6, 8, 12, 39-42, 77-78, 81-82. In short, a substantial portion of
19 both cases concerns identical parties, facts, evidence, witnesses, and legal theories.

20 *Second*, separate assignment would result in unnecessary duplication of labor and expense.
21 While there can be no doubt that Judge Chhabria is more than capable of handling this case, the
22 simple fact is that Judge Koh has already done much of the relevant work. Over the course of four
23 years and the most significant motions in a class action, Judge Koh has reviewed the considerable
24 record evidence and fielded and decided many of the legal issues present in both cases, work that
25 would have to be done more or less from scratch by any new judge.

26 The fact that some defendants are only in one case, and some facts or evidence relevant in
27 one case may not be relevant in the other, does not defeat the substantial similarity between the two.
28 *See, e.g., Ervin v. Judicial Council of Cal.*, No. 06-cv-7479, 2007 WL 1489165, at *2 (N.D. Cal.

May 18, 2007). Nor is it material that the two suits are at different stages; “[t]wo related cases may still proceed on different schedules,” and thus “this action can proceed on its own timetable.” *Financial Fusion, Inc. v. Ablaise Ltd.*, No. 06-cv-2451, 2006 WL 3734292, at *4 (N.D. Cal. Dec. 18, 2006). There is therefore no risk of delay in either suit due to relation. *Id.*

Accordingly, Plaintiff respectfully requests that the Court direct the Clerk of Court to reassign *Nitsch* to the Honorable Judge Lucy H. Koh.

Dated: September 15, 2014

COHEN MILSTEIN SELLERS & TOLL PLLC

By: /s/ Daniel A. Small

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CERTIFICATE OF SERVICE

I am over the age of eighteen (18) and not a party to this action. My business address is 1100 New York Avenue NW, Suite 500, Washington, DC 20005.

On September 15, 2014, I served Plaintiff's Notice of Motion and Administrative Motion to Consider Whether Cases Should Be Related on all parties in both *In re High-Tech Employee Antitrust Litigation*, No. 11-cv-2509, and *Nitsch v. DreamWorks Animation SKG, Inc.*, No. 14-cv-4062. I served all parties in *In re High-Tech*, including Pixar and Lucasfilm Ltd., LLC via ECF. I served DreamWorks Animation SKG, Inc., The Walt Disney Company, Digital Domain 3.0, Inc., ImageMovers, Sony Pictures Animation, and Sony Pictures Imageworks by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows:

DreamWorks Animation SKG, Inc. Capitol Services, Inc. 1675 S. State St., Ste. B Dover, DE 19901	Sony Pictures Animation Sony Pictures Entertainment, Inc. 10202 W. Washington Blvd. Culver City, CA 90232
Digital Domain 3.0, Inc. National Registered Agents, Inc. 160 Greentree Dr., Ste. 101 Dover, DE 19904	Sony Pictures Imageworks Sony Pictures Entertainment, Inc. 10202 W. Washington Blvd. Culver City, CA 90232
ImageMovers, LLC David Jackel 1880 Century Park East, Ste. 1600 Los Angeles, CA 90067	The Walt Disney Company Corporation Service Company 2711 Centerville Rd., Suite 400 Wilmington, DE 19808

I am readily familiar with Cohen Milstein Sellers & Toll's practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at 1100 New York Avenue NW, Washington, DC 20005.

ImageMovers Digital does not have a registered agent. Plaintiff is currently attempting to determine how to serve the complaint and this motion on ImageMovers Digital. Among other steps, we have called the registered agent for ImageMovers, a related company, and left a message asking

1 him to inform us whether he is authorized to accept service for ImageMovers Digital. As soon as an
2 appropriate agent is determined, I will serve this Notice of Motion and Motion on ImageMovers
3 Digital.

4 Date: September 15, 2014

/s/ Jeffrey B. Dubner

Jeffrey B. Dubner